**IN THE HIGH COURT OF UTTARANCHAL**
**AT NAINITAL**

Criminal Misc. Application No. 561 of 2006

Smt. Rashmi Bangwal
W/o Shri Achlanand Bangwal
R/o 1/1 Kishan Nagar Chowk
Ballupur Road, Dehradun.
District Dehradun .....Applicant

Vs

1. State of Uttaranchal,
2. Rohit Sharma
   S/o Shri Pushparaj Sharma
   R/o 22, Khurbura Mohallad
   Police Station Kotwali, Dehradun
   District Dehradun .....Respondents.

Sri Lokendra Dobhal, learned counsel for the applicant.

**Hon'ble B.C. Kandpal, J.**

This petition Under Section 482 Cr. P.C. has been filed by the applicant who has been summoned by the Special Judicial Magistrate, IInd, Dehradun to face the trial under Section 138 of Negotiable Instruments Act. The petitioner thus filed this petition quashing the summoning orders dated 20.07.2005 and 10.07.2006 contained as annexure Nos. 3 and 5 to the petition in Criminal Case No. 302 of 2005 under the aforesaid section.

2- Brief facts of the case are that the complaint was filed by the respondent No.2 against the petitioner under Section 138 of Negotiable Instruments Act stating therein that the petitioner took an amount of Rs. 80,000/- from the complainant and when the complainant asked to return the amount, the petitioner – Rashmi Bangwal issued a cheque to him with an assurance that the same would be honored by the bank but the bank returned the same to the respondent No. 2 due to insufficient fund and then the cheque was

presented before the court which was dishonored. Therefore, immediately after the dishonoring of the cheque a complaint was filed against the petitioner. The Special Judicial Magistrate 2nd after having perused the complaint came to the conclusion that there is a prima facie case against the petitioner, hence issued the summon against the petitioner for facing the trial under Section 138 of Negotiable Instruments Act on 20.07.2005.

3. Heard Sri Lokendra Dobhal, learned counsel for the petitioner, learned A.G.A. for the State and perused the record.

4. Having considered the arguments advanced by the learned counsel for the petitioner, I am of the view that there is no abuse of process of the court in this case. Learned counsel for the petitioner has submitted that the complainant himself is a money lender and he lends the money without any license, hence he was not authorized to give the money to the petitioner on lone.

5. This is a disputed question of fact and can been assessed by the trial court only. While exercising the jurisdiction under Section 482 Cr. P.C., I am not supposed to embark upon an enquiry with regard to the credibility of the evidence. Any judgment rendered by me at this stage would amount to pre-mature judgment, as the evidence is still incomplete and hazy.

6. I do not find any force in this petition, therefore, the petitioner lacks merit and is liable to be dismissed.

7. Accordingly, the petition under Section 482 Cr. P.C. is dismissed.

8. However, in case, if the applicant appears before the court for seeking his bail, the court concerned shall expedite the disposed of his bail application.

**(B.C. Kandpal, J.)**

**20.07.2006**
**ASWAL**